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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 10103

COPPERWELD STEEL COMPANY,
Plaintiff

BALTIMORE & OHIO RAILROAD COMPANY,
Intervener

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, Copperweld Steel Company, Plaintiff, and Baltimore and Ohio Railroad Company, Intervening Plaintiff, submit herewith their statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the final decree and order of the United States District Court entered herein on June 24, 1952. A petition for appeal is presented to the District Court herewith, to-wit,

Opinion Below

The opinion of the District Court for the Western District of Pennsylvania was rendered on June 24, 1952. A copy of the opinion and judgment entered the same day are attached hereto as Appendix "A".

Jurisdiction

The judgment of the District Court was entered on June 24, 1952. A petition for appeal is presented to the District Court herewith, to-wit, on August 12, 1952. Jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1253 and 2101(b). *United States* v. *Capital Transit Co.*, 338 U. S. 286. *Henderson* v. *United States*, 339 U. S. 816.

Statutes Involved

This appeal involves the interpretation of the following statutory provisions: Section 15 (13) of Part I of the Interstate Commerce Act 54 Stat. 911 (49 U.S.C. Par. 15 (13)), which reads as follows:

> If the owner of property transported under this chapter directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this chapter and shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

Section 15 (1) of Part I of the Interstate Commerce Act 54 Stat. 911 (49 U.S.C. Par. 15 (1)), which reads as follows:

> Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the commission on its own initiative, either in extension or any pending complaint or with-

out any complaint whatever, the commission shall be of opinion that any individual or joint rate, fare or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property, as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare or charge, or rates, fares or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation of practice so prescribed.

Section 6 (7) of Part I of the Interstate Commerce Act, 41 Stat. 483 (49 U.S.C. Par. 6 (7), which reads as follows:

"No carrier, unless otherwise provided by this part, shall engage or participate in the transportation of passengers or property, as defined in this part, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and

published in accordance with the provisions of this part; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Sections 1 (3), 1 (4), 1 (10) and 1 (11) of Part I of the Interstate Commerce Act, 41 Stat. 474 (49 U.S.C. Pars. 1 (3), 1 (4), 1 (10), and 1 (11), which read, in part, as follows:

1 (3) (a) " . . . The term 'transportation' as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported . . . "

1 (4) "It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request . . . "

1 (10) "The term 'car service' in this part shall include the use, control, supply, movement, distribution, exchange, inter-change, and return of locomotive, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this part."

1 (11) "It shall be the duty of every carrier by railroad subject to this part to furnish safe and adequate car service . . . "

The National Transportation Policy, 54 Stat. 899, preceding Section 1 of the Interstate Commerce Act (49 U.S.C. par. 1), which reads as follows:

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote, safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; —— all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Statement

This action was brought by Plaintiff industry to set aside, annul, suspend and enjoin an order of Division 3 of the Interstate Commerce Commission, entered September 28, 1951, in proceedings known as Investigation and Suspension Docket No. 5357, Terminal Allowance, Copperweld Steel Company, Warren, Ohio. The Baltimore and Ohio Railroad Company, the carrier involved, by appro-

priate order of the District Court was authorized to intervene as Plaintiff in this action. It has not prosecuted a separate appeal in this cause but has joined with the Plaintiff industry, as authorized by Rule 48 of the Rules of the Supreme Court of the United States, as amended. Petitions of Plaintiff and Intervening Plaintiff for reconsideration by the entire Commission of said order of Division 3 was denied by the Commission on November 20, 1951.

The Commission in its report of September 28, 1951, entered by Division 3, held that the existing line-haul rates of the intervener railroad must be construed to cover the delivery and receipt of shipment at reasonably convenient points; that the interchange tracks in Yard 100 in Plaintiff's plant constitute such reasonably convenient points; that the common carrier transportation which the railroad is obligated to perform begins and ends at those interchange tracks; that all services beyond those tracks are in excess of those required in simple switching or team track delivery and are industrial or plant services which it is not the duty of the railroad to perform; and that the performance by the railroad without reasonable compensatory charges in addition to the line-haul rates of the described services within the plant area beyond the interchange tracks results in Plaintiff receiving a preferential service not accorded shippers generally and results in the refunding or remitting of a portion of the rates and charges collected, in violation of Section 6 (7) of the Interstate Commerce Act.

By its order entered on said report, Division 3 required the cancellation of the tariff providing for terminal allowance to the industry of $1.19 per car, which said allowance in previous report and order had been found by Division 3 just and reasonable in those instances where in that order it found such service was within the railroad's com-

mon carrier obligation to perform under the line-haul rates.

The effect of the above report and order is to deprive the industry of any and all placement of loaded or empty cars, and of any and all switching services with respect to inbound and outbound shipments.

This action of the Commission is complained of because the Commission has misapplied long established principles promulgated by it in its own Ex Parte 104, Part II proceeding, cited as In Re: Propriety of Operating Practices—Terminal Service, 209 I.C. 11, and has based its order on findings arrived at in an arbitrary manner without evidentiary support contained in either specific findings in the report itself or in the evidence of the case. Although the application of such principles may have justified the Commission in making similar orders in other cases previously decided by it, it did so in the instant case and applied them to an industry with none of the reasons existing in other cases present in this case.

The industry's yards and tracks were designed and constructed within the last ten years, under the supervision of impartial railroad engineers and traffic experts to meet the recognized and established rules of the Interstate Commerce Commission relating to plant switching and terminal services. Only one railroad serves the plant and the evidence establishes clearly that motive power of the industry and the motive power of the railroad operate without interference or delay to the switching performed by the railroad. In spite of such evidence and in face of complete lack of evidence to the contrary, the Commission made an inferential finding of inherent interference.

The Three-Judge Statutory Court erred in ignoring the evidence of the case and failed to give due weight to the examiners report and findings, which in all material respects, differ from those of the Commission and in abdicat-

ing its functions of reviewing the facts through the expedient of refusing to substitute its judgment for that of the Commission, thus, perpetuating a discrimination against this industry, obviously resulting from the Commission's Order.

The Questions Involved are Substantial

This case involves a question of great importance to the nation's industries, to its railroads and to the public generally because the Interstate Commerce Commission has exceeded its authority and abused its discretion by entering its report and orders based thereon arbitrarily and without evidence to support such orders. In doing so the Commission has gone far beyond the rules and principles laid down by this Court in: *United States* v. *American Sheet & Tin Plate Co., et al,* 301 U.S. 402; *United States* v. *Wabash R. Co., et al,* 321 U.S. 403; *United States* v. *Denver and Rio Grande R. Co., et al,* 339 U.S. 186; and *Universal Camera Corp* v. *National Labor Relations Board,* 340 U.S. 474. In so doing, the Commission has violated the letter and intent of the Interstate Commerce Act, the National Transportation Policy and the Administrative Procedure Act. In its zeal to apply worthy principles of protecting the railroad's funds, revenues, and preventing discriminations, the Commission has resorted in this case to arbitrary actions and practices. Unless reviewed and checked by this Court, the result in this case is to deprive Plaintiff and other industries similarly situated of their property without due process of law.

Indeed, the ruling of this case, if sustained, gives the Commission a "green light" to short-cut its procedures in this class of cases and on the basis of recited general findings and ultimate conclusions *only,* devoid of evidentiary support, deprive a large portion of the nation's in-

dustries of rights and privileges consistently recognized and protected by the Commission and the Courts from the earliest days of railroad transportation and regulation.

Moreover, the result in the instant case is to seriously weaken the Administrative Procedure Act and to side-step and evade the long delayed and highly desirable objectives of that legislation. In this case, the Commission has taken a long step in freeing itself of those needed safeguards and limitations which Congress intended to impose by the Administrative Procedure Act. Such arbitrary Administrative action, as here appears, should be reviewed and reversed.

The specific question of substance involved in this case is whether, in the exercise of its power to determine as a question of fact what is embraced within the service of transportation and what is outside of it, or as sometimes stated, the point of time and space at which the carrier transportation service ends, may the Commission do so in complete disregard of the evidence, basing its action on arbitrary findings and abstract general principles which not only are unsupported by the evidence but are contrary to the uncontradicted evidence of record?

The question is of paramount importance because the instant case is an illustration of how indiscriminate exercise of such a power by the Commission, motivated perhaps by an excess of zeal to eliminate abuses—and emboldened by general court approbation of its action in certain cases—may achieve quite a contrary result and lead to the very abuses sought to be eliminated.

Although this case originated as an I. & S. case, the order of the Commission is based on findings arrived at through the application, or rather misapplication of principles enunciated by the Commission in a report which was the culmination of proceedings instituted by the Com-

mission to eliminate discriminatory terminal practices by carriers and referred to as Ex Parte 104, Part II proceedings, 269 I.C.C. 11. While the propriety and validity of the principles have been repeatedly recognized by the Courts and are not questioned by Plaintiffs, it is nevertheless contended that the factual picture as revealed by the uncontradicted evidence in this case did not warrant the application thereof in the manner in which it was done by the Commission; or, to state it differently, the proper application thereof should have resulted in an order upholding the allowance tariff. The result was that instead of eliminating practices by which other industries would be discriminated against as compared with Plaintiff, Plaintiff is by all standards being discriminated against through the deprivation of service to which it is legally entitled under the line-haul rate.

The question as above formulated is predicated upon the principle laid down by the Supreme Court of the United States in *U. S.* v. *American Sheet and Tin Plate Co.*, 301 U. S. 402; 57 S. Ct. Rep. 804, that the Commission is clearly empowered to determine what is embraced within the service of transportation and what lies outside the service provided its findings are supported by evidence. This principle has been followed by the Supreme Court in a line of cases culminating in the comparatively recent decision of *U. S.* v. *U. S. Smelting, Refining and Mining Co., et al.*, 339 U. S. 186; 70 S. Ct. Rep. 537. The principle has in some cases been differently stated; namely, that the point in time and space at which the carrier's transportation service begins and ends is a question of fact to be determined by the Commission and its findings on that question will not be disturbed by the Courts if supported by evidence.

The contention of Plaintiffs is that in the instant case the

order of the Commission violates the above principles in that its findings are not only unsupported by the evidence but are contrary to the uncontradicted evidence of the case within the meaning of evidence as defined by the Supreme Court in *Washington V and M Coach Co.* v. *Labor Board*, 301 U. S. 142; 57 S. Ct. 648; that evidence is synonymous with substantial evidence, or as more fully explained in *Consolidated Edison Co.* v. *Labor Relations Board*, 305 U. S. 197, as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Bearing in mind the aforementioned tests, it is contended that the findings of the Commission as contained in its report and upon which its order is based are not only completely devoid of evidentiary support but are also contrary to the very principles announced by the Commission in its Ex Parte 104 proceedings and the various supplemental proceedings instituted in its implementation of the original Ex Parte 104 Report. This will be demonstrated in an analysis of the various findings of the Commission which follows:

The erroneous ultimate finding of the Commission that it is unlawful for the railroad (intervening plaintiff herein) to perform the service of placement and removal of cars to and from predesignated locations in plaintiff's plant is predicated upon subordinate findings which as noted are clearly not supported by substantial evidence, and in fact are contrary to the uncontradicted evidence of record. Those findings are:

> (a) The presence of industry's locomotives in the plant constituted an inherent interruption or interference prohibiting placement and removal service in a continuous movement.

There is no substantial evidence to support such a finding and conclusion. There is no evidence that in fact the industry's locomotives operated in such manner that interruption and interference were inevitable, or, that in fact it did occur. The uncontradicted evidence is that no interruption or interference with the railroad's switching did take place and the industry's operations were carefully and deliberately planned and executed so that none did or would occur. In a previous case, 269 I.C.C. 323, 336, the Commission said:

> ". . . It is said that the industry's engines did not operate over the tracks of the eastern side of the plant while respondent's engine is in the plant except while respondent's crew is at lunch or taking water. An effort, which is successful to a considerable extent, is made to keep the industry's engine doing the general plant work out of the way of respondent's engines. In the absence of evidence to the contrary, we accept it as a fact that interruption hereinafter referred to, does not occur on those tracks."

In another case, 281 I.C.C. 365, at page 370, it was stated:

> "During the test period no interference was encountered with the industry's engines because those engines did not operate at any time in the mill area and serviced the wood chain tracks only at such times as respondent's engines were not in the plant or when those engines were in the mill area."

In still another case, 266 I.C.C. 437, 447, it is stated:

> ". . . At that time, the industry was doing its own switching. Whether there would be the same lack of interference if the Illinois Central were performing the switching is problematical, but in the absence of evidence to the contrary and considering the nearness

> of the Illinois Central's yard to the several districts, the potential interference alone will not be held to be sufficient grounds to require a finding that the Illinois Central may not receive and deliver interstate traffic at the other districts at the line-haul rates."

In the latter case the Commission dismissed "potential interference" as a ground for denying the right to service at line-haul rates in the absence of showing actual interference. In our case, neither does the Report of the Commission contain findings, nor does the record contain substantial evidence of actual interference due to concurrent operation of industry and railroad power. The Hearing Examiner's proposed report contained no conclusion or finding of such interference.

(b) The weighing and reweighing of cars by the railroad on plaintiff's scales constitutes interference and interruption within the meaning of those terms as used in Propriety of Operating Practices—Terminal Services, 209 I.C.C. 11.

This finding is clearly not supported by the evidence and is contrary to the uncontradicted evidence. The evidence is uncontradicted that weighing of cars is necessary to ascertain the accurate weights upon which to assess freight charges as to all cars weighed or reweighed. (In Re: Weighing of Freight by Carriers, 28 I.C.C. 7). The Commission itself holds that carriers must assess charges on proper weights, which they must ascertain. The undisputed evidence is that the reweighing of scrap is necessary because of the debris and foreign matter in the cars (the Hearing Examiner so found) to ascertain accurate weights for freight charges. The positive and uncontradicted detailed evidence is that such weighing and reweighing was done by the railroad on the industry's scales by gratuitous

permission of the industry because, it was more advantageous, more convenient, and more economical to it, than if done on the railroad scales near or remote to plaintiff's plant. Such weighing on industry's scales was a single procedure consuming less than one minute per car, involving no extra switching but done in a continuous movement. It was weighing primarily for Plaintiff's benefit and a different type of weighing condemned in Ex Parte 104, Part II. Similar weighing as took place in Plaintiff's plant was held by the Commission to be no obstacle to the inclusion of terminal service in the line-haul rates in the following cases:

In the case of Wickwire, Inc. Terminal Allowance, 274 I.C.C. 307.

In cancellation Terminal Charges at Decatur, Illinois. 277 I.C.C. 57.

In the case of Interlake Iron Corporation Terminal Allowance, 245 I.C.C. 437.

(c) The Respondent is not obligated to deliver scrap in Yard 300, or on Track 500, or in Yard 500, or on Track 110, dependent upon the availability of space at each of the locations; variable points for delivery would require direction and control by the industry without reference to carrier's operating convenience, and in many instances, additional movement in order to reach the point of placement.

There is no substantial evidence that the circumstance of there being four distinct points of placement of scrap occasioned interference or delay in the switching of scrap. On the contrary, the evidence is clear and undisputed that the point of placement was predetermined in each instance

and that in each instance, one movement and one placement was required by the railroad. As far as the railroad was concerned, there were no *variable* points of delivery although there were *various* points of delivery. The choice of any of these points was never left to the railroad but was an industrial function which, once performed, converted such point into a fixed point involving only one movement and one placement on the part of the railroad, at its own operating convenience as to time and method.

> (d) The frequent, and what may be termed, special services in connection with switching of ingots from track 315C are for the benefit of the industry and in excess of the services respondent is obligated to perform at the line-haul rates.

This finding is not supported by substantial evidence. The procedure respecting the ingot switching is an integrated movement with other switching not found improper. It is performed completely at the railroad's convenience; without interruption and interference. It is not a proper basis for holding the entire service unlawful, particularly, since the evidence is that the ingots shipments involved are not within the scope of the usual and normal business of plaintiff. This movement was a temporary one and in fact has since been discontinued.

The questions are raised with respect to that portion of the policy providing for fair and impartial regulation of all modes of transportation subject to the provisions of the Interstate Commerce Act so as to recognize and preserve the inherent advantages of each. The result of the Commission's order is to foreclose the railroad from giving complete transportation service under the line-haul rate in a case where every effort has been made by the railroad

and the shipper to bring the service within standards prescribed by the Commission and where the facts undisputably show that the service so rendered meets such tests. The Commission by disregarding the evidence and arbitrarily decreeing such service to be in excess of that contemplated under the line-haul rate is creating a situation tending to disparage the advantages of railroad transportation and thus is embarking on a course which the National Transportation Policy sought to enjoin.

Court below fell into same error as did the Commission in failing to find that the Commission's findings and conclusions were not supported by substantial evidence and were contrary to uncontradicted evidence:

Specifically, the errors of that Court were:

(a) Finding that there was substantial evidence to support Commission's findings.

(b) That Commission's action in reaching contrary findings and conclusions to that of the Hearing Examiner were proper.

(c) Failing to find that because of the uncontradicted evidence that the railroad's service was performed at its own convenience, without direction and control of the industry, without interference and interruption by plaintiff and in a continuous movement all in accordance with the rule of conduct laid down by the Commission in Ex Parte 104, Part II, that the Commission's order lacked substantial evidence to support it and in fact, its findings were contrary to the evidence; was arbitrary and therefore invalid.

These questions, which we believe to have been decided erroneously or ignored by the Court below, are of great importance not only to the Plaintiff industry and the Railroad, but to industry and transportation as a whole. Not only are particular precuniary interests adversely affected, but long-standing, previously unchallenged industrial prac-

tices and economic balances are disrupted by the Commission's order. Accordingly, it is submitted that substantial questions are involved which call for appropriate exercise of appellate jurisdiction.

Respectfully submitted,

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Dated: August 12, 1952.

APPENDIX "A"

DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil No. 10,103

COPPERWELD STEEL COMPANY, *Plaintiff*,

THE BALTIMORE & OHIO RAILROAD COMPANY,
Intervening Plaintiff,

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION, *Defendants*.

Petition to Enjoin Orders of the Interstate Commerce Commission.

Before STALEY, Circuit Judge, and GOURLEY and MARSH, District Judges.

OPINION OF THE COURT—Filed June 24, 1952

By WALLACE S. GOURLEY, *Chief District Judge*.

The matter before this Court is an action to set aside and annul an order of the Interstate Commerce Commission, entered September 28, 1951, cancelling a tariff of the Baltimore and Ohio Railroad as being in violation of Section 6 (7) (49 U.S.C.A. sec. 6 (7)) of the Interstate Commerce Act and denying the petitions of the plaintiff and intervening plaintiff to reconsider its decision.

A three-judge court was convened as required by Title 28 U.S.C.A. secs. 2284 and 2325. The case was heard on March 11, 1952 at which time all matters involved were duly considered. All issues were submitted for final adjudication.

The following facts appear from the Commission's report of December 1, 1947, and its report on further hearing of September 28, 1951, and were substantially reiterated at the hearing before this Court.

Copperweld operates a steel manufacturing plant adjacent to the right of way of the B & O within the switching limits of Warren, Ohio. The plant includes an elaborate layout of industrial tracks used for loading, unloading and switching cars of raw materials and manufactured products in its yards numbered 100, 200, 300 and 500, which are located immediately north, southeast, south and west, respectively, of the plant buildings and structures. Copperweld owns and operates three diesel locomotives, one steam engine, four locomotive cranes and a number of railroad cars of various descriptions.

The connection used by B & O to deliver cars to and remove cars from the plant leads northwestwardly from its tracks to yard 100, track 100.

Upon arrival of the train at yard 100, Copperweld's yardmaster tenders a switch list to B & O's conductor, which designates the places where inbound cars should be placed or spotted by B & O's crew. There are track scales located on track 100 where inbound cars of scrap iron are weighed. The inbound cars of scrap iron are thereafter switched by B & O engines to other tracks and other yards, from which they are thereafter moved by Copperweld's engines, and cars of other materials and empty cars are placed or spotted at various points in the plant for unloading and loading. B & O's engines likewise switch outbound empty and loaded cars from the plant to track 109 in yard 100 where the outbound train is marshaled. In the course of removal to track 109, cars loaded with ingots and produced scrap iron and cars from which scrap iron has been unloaded are weighed on track 100. Other outbound commodities are weighed by Copperweld before loading.

The suspended tariff provided that B & O would pay Copperweld $1.19 per car, with minor exceptions and modifications, for switching services performed by Copperweld beyond yard 100. The Commission in its report and order of September 28, 1951, found that tracks on yard 100 were suitable for interchange of cars between Copperweld and B & O and that the responsibility of B & O to deliver cars as a part of line-haul transportation ended at this point of interchange, and that, therefore, B & O could not law-

fully assume the obligation for the further switching and spotting of cars.

Plaintiffs have raised numerous objections to the Commission's order, but substantially these objections entertain the thesis that the findings of the Commission are not supported by the evidence and are arbitrary and beyond the power of the Commission to make.

This Court cannot assume the burden of substituting its views for those of the Commission on matters for which the Commission is especially trained and experienced, having the technical know-how and interpretive facilities at its disposal.

The point in time and space at which the carrier's transportation service ends is a question of fact to be determined by the Commission and not the courts; and its findings on that question will not be disturbed by the courts if supported by substantial evidence on the record considered as a whole. Universal Camera Corp. *v.* N.L.R.R., 340 U.S. 474.

The facts are extremely detailed as to the numerous switching operations conducted on the premises of Copperweld.

The fact that the Commission's determination did not accept the recommendations of the examiner, was weighed in the Court's review of the Commission's substituted findings, Universal Camera Corp. *v.* N.L.R.R., supra. However, what is preserved in the record satisfactorily discloses that the Commission's substituted findings were compelling justified.

There is no doubt in our minds that there was substantial evidence upon which to predicate a conclusion that said switchings constituted an interruption of a continuous transportation movement and necessarily became a terminal operation.

The Court could not overlook the glaring incongruity of plaintiff's position. The Copperweld yards encompassed 18 miles of track. An average of 25 cars entered, and 25 cars departed from said yards each day.

Despite Copperweld's contention that the movements through its yards were continuous and uninterrupted, we

could not ignore the salient fact that the B & O Railroad employed three full crews, who were engaged not only in bringing the cars up to yard 100, but in conjunction with additional personnel of Copperweld, also devoted a substantial part of their time in facilitating the movements within the Copperweld yards. The multiplicity of switching operations conducted within these yards consumed an average of ten to sixteen hours per day on the part of the crew of the B & O Railroad.

How well the Commission utilized the evidence before it or what weight it assigned to its various parts is not a matter upon which this Court may rule. Interstate Commerce Commission et al. *v.* City of Jersey City et al., 322 U.S. 503, 512, 513. The facts in determining where transportation ceases and terminal operations begin are empiric, fluid and complex. They are not to be shifted from the shoulders of the experts commissioned to handle them to the backs of the judiciary; nor are the broad powers of judgment conferred upon the experts to be unduly hampered. Western Paper Makers' Chemical Co. et al *v.* U.S., 271 U.S. 268, 271. Correctness of reasoning, soundness of conclusion or alleged inconsistency of findings with those of prior proceedings are not to be inquired into by the courts. Virginian Ry Co. *v.* U.S., 272 U.S. 658, 665, 666.

The Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. This cause came on to be heard before a duly constituted statutory court which was convened pursuant to statute (28 U.S.C.A. Sec. 2284(1) and Sec. 2325) to hear and determine the applications.

2. By agreement of the parties the issues were submitted upon final hearing, upon the pleadings and upon the complete record of the proceedings before the Interstate Commerce Commission and the said Commission's findings and decision thereon.

3. This proceeding was brought to enjoin, set aside, annul and suspend the reports and orders of the Interstate Commerce Commission made on December 1, 1947, as modi-

fied on September 28, 1951, the proceeding known as the Investigation and Suspension Docket No. 5357, Terminal Allowance, Copperweld Steel Company, Warren, Ohio.

4. The Order of of the Commission issued on September 28, 1951, required the carrier, B & O Railroad Company, to cease and desist on or before December 17, 1951 to provide terminal service for the Copperweld Steel Company under its interstate line haul rates beyond the interchanged tracks described in the Order of the Commission on the premises of Copperweld Steel Company.

5. The Order of the Commission further provided that the B & O Railroad Company was required to cancel the schedules referred to in the Commission's report on or before November 15, 1951, such schedules relating to changes made between the B & O Railroad Company and the Copperweld Steel Company for the performance of terminal services on the premises of Copperweld Steel Company.

6. The Interstate Commerce Commission had before it substantial evidence in support of its findings.

Conclusions of Law

1. The Court has jurisdiction of this cause and of the parties thereto.

2. The Interstate Commerce Commission had jurisdiction over the proceedings wherein the said Orders of December 1, 1947 and September 28, 1951 were made, and to make the said Orders,

3. Said Orders were within the constitutional and statutory authority of the Commission, and were not arbitrary or based upon mistake of law or misapplication of the proper statutory standards. Said Orders were made by the Commission upon adequate findings supported by substantial evidence, and in accordance with the applicable law, and were and are valid and lawful in all respects.

4. The Interstate Commerce Commission has suspended the effectiveness of the orders issued from time to time, pending disposition of the questions raised in the within proceeding, the last suspension order to expire on June 25, 1952.

5. The relief prayed for in the complaint should be denied, and the suit dismissed; plaintiffs to pay the costs.

Final Decree

This cause having come on to be heard on March 11, 1952, before a duly constituted district court of three judges, and all parties being represented by counsel, and the cause having by agreement of all parties been submitted upon final hearing, upon the pleadings and upon the complete record of the proceedings before the Interstate Commerce Commission, and the Commission's findings and decision thereon; and this Court having taken the cause under advisement and considered the pleadings, the evidence, the arguments and briefs of counsel, and having on this date duly rendered its opinion sustaining the validity and lawfulness of the orders of the Interstate Commerce Commission made on December 1, 1947 and September 28, 1951, to set aside which the present suit was instituted; and this Court having duly made its findings of fact and conclusions of law, dated this day and filed herewith,

Now, Therefore, It Is Finally Determined, Ordered, Adjudged and Decreed that the relief prayed for by plaintiffs to enjoin, set aside, annul and suspend the reports and orders of the Interstate Commerce Commission, entered December 1, 1947 and September 28, 1951, is hereby denied and the suit is dismissed. Plaintiffs to pay the costs.

(S.) Wallace S. Gourley, *C.D.J.*
(S.) Rabe F. Marsh, Jr., *D.J.*
(S.) Staley, *Circuit Judge.*

Dated this 24th day of June, 1952.